

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability)
company,)

Plaintiff,)

vs.)

KEVIN SYKES-BONNETT and SYKED)
ECU TUNING INCORPORATED, a)
Washington corporation,)

Defendants.)

No. 3:17-cv-05760 BHS

**DECLARATION OF KEN CANNATA
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I, Ken Cannata, hereby declare as follows:

1. I am over the age of 18, of sound mind and fully capable of making this declaration. I submit that this declaration is based on personal knowledge, following a reasonable investigation into the statements appearing below. If called upon as a witness, I could and would competently testify to the truth of each statement herein.

2. In about 2003, together with Keith Prociuk and Chris Piastri, I co-founded the entity that later became HP Tuners ("HPT"). HPT started as an open source project, originally called DX Software ("DX"), with the purpose of developing a way to reprogram automotive the electronic controllers for cars, commonly referred to as Engine Control Units or ECUs.

3. Reprogramming a car's ECU is a sensitive operation and requires an intimate knowledge of the inner workings of the car's "brain" or computer. In a very brief explanation, a

1 handheld device or cable is plugged into an ODB-II connector on the car, which provides access
2 to the firmware stored in the ECU. Then, the handheld device or cable causes a replacement
3 firmware to overwrite any preexisting firmware within the ECU. This process is called
4 “flashing” a new ROM (firmware) to the ECU.

5 4. The existing ECU firmware or ROM, which originally comes from the automotive
6 manufacturer, is highly precise and must cooperate with nearly every other electronic component
7 of the car. For those reasons and others, flashing a new ROM into an ECU has a very high
8 potential to render the ECU useless (referred to as “bricking an ECU”) if the replacement
9 firmware is not precisely programmed for the specific target ECU.

10 5. Because flashing new ECU firmware requires such careful accuracy, much must
11 be known about the particular ECU being flashed, such as exactly what parameters, codes, and
12 firmware may be changed to avoid bricking the ECU. It is to address the need for such extensive
13 and elaborate technical information that HPT’s predecessor entity (DX) was created.

14 6. While operating as an open source project between 2003 and 2004, HPT (then
15 DX) invited the entire tuning community to participate in the DX project by providing whatever
16 technical documentation and files the community members had that described the intricacies of
17 various ECUs for existing cars. In some instances, community members were able to provide
18 “A2L files” which are copies of the actual mapping files for parameters as originally developed
19 by the automotive manufacturers.

20 7. HPT (as DX) encouraged the entire tuning community to actively reverse engineer
21 every automotive manufacturer’s ECUs to build a database of knowledge and technology that
22 could be used to create reliable and safe ECU firmware files. Very many members of the tuning
23 community participated in the DX project based on HPT’s promise that the information would
24 remain free and open source, for use by everyone at no charge.

25 8. Sometime in 2004 or 2005, HPT betrayed the DX community and closed the open
26 source DX project. By then, HPT had received a sufficient amount of donated technical
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1 information from the community that HPT decided to commercialize it. It was then that HPT
2 launched a commercial product and began selling access to the hard work and contributions of
3 the entire community, right back to that very same community despite its earlier commitment to
4 remain an open source project.

5 9. During my tenure at HPT, I worked initially, as did the entire community, on
6 reverse engineering ECUs and other controllers for various cars. In addition, as the industry
7 matured, I and the rest of the HPT engineering department began reverse engineering the
8 software and hardware products of other companies in the community.

9 10. There are countless examples of HPT's efforts to reverse engineer the products of
10 its competitors as it alleges was done by Syked Tuning. But to demonstrate one obvious example,
11 Exhibit 1-J to HPT's motion (Dkt 62-2, page 19) shows a screen capture of one dialog of the
12 HPT PCM_Tools software that was developed while I was at HPT. A field is visible in that
13 screen capture in which a user can choose from among a few types of hardware cables with which
14 to use the HPT software. One such option is labeled "Carputing," which relates to a handheld
15 tuning device developed by the Carputing company. The existence of that option is because the
16 engineering department at HPT hacked the Carputing hardware device specifically to reverse
17 engineer the communication interface of that hardware device so that the HPT software could be
18 used with it. This was done without the authorization of Carputing.

19 11. The entire time I was with HPT, the engineering department was constantly
20 attempting to reverse engineer the products of its competitors, such as SCT, EFI Live, Diablo,
21 Carputing, and more. Because the entire industry is founded on the notion of hacking the ECUs
22 of automotive makers, hacking and reverse engineering is the routine method of doing business
23 for HPT as well as all the other companies in the industry.

24 12. In addition to hacking the products of other competitors, it is also very common
25 in the industry to purchase the technical documentation and files from others. For instance, I am
26 aware that while I was with the company, HPT acquired from various automotive manufacturers
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1 (such as General Motors and Holden) source code and software tools that were proprietary to
2 those automotive manufacturers for use by HPT in reverse engineering the ECUs of those
3 manufacturers.

4 13. Through the course of my duties at HPT, I came to learn about Kevin Sykes-
5 Bonnett and his work with Dodge/Chrysler/Jeep (collectively "Dodge") cars and trucks. In
6 response to posts he had made on an online forum discussing HPT products, HPT reached out to
7 him about possibly acquiring technical documents from him. Specifically, Eric Brooks of HPT
8 contacted him in late 2014 and put him in touch with me.

9 14. HPT reached out to Kevin for the purpose of acquiring certain confidential
10 information we knew had had but which HPT did not. Kevin and I reached a deal in or about
11 February 2015 for Kevin to provide HPT with certain technical documents pertaining to certain
12 models of Dodge and GM vehicles. We reached a deal whereby HPT would pay \$5,000 to Kevin
13 and provide him with an HPT interface cable pre-installed with fifty credits for him to use in his
14 tuning business.

15 15. I met Kevin in about the middle of March of 2015 in California. At that meeting,
16 I personally delivered a check made payable by HPT to Kevin in the amount of \$5,000. We did
17 not provide Kevin with the promised interface cable at that time. Kevin provided HPT with
18 several valuable technical documents which HPT then used in its business. The HPT interface
19 cable was to be shipped to Kevin.

20 16. Because of the quality of the technical documents we received from Kevin, the
21 relationship between HPT and Kevin continued for some time. This relationship continued until
22 well into 2016, maybe even to the end of 2016. Over that time, individuals at HPT attempted to
23 acquire several additional technical documents for various makes and models of cars, including
24 Ford and GM models.

25 17. However, HPT had reneged on its promise to provide Kevin with an HPT
26 interface cable with fifty pre-installed credits. Instead, HPT finally delivered an interface cable
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1 about six months later than promised, roughly September of 2015, and then with only eight (not
2 fifty) pre-installed credits. Kevin continued to demand the additional credits that he had been
3 promised, but HPT initially refused. Kevin would not accept that he had been shorted forty-two
4 credits and would continually demand them each time HPT reached out to him for additional
5 technical information.

6 18. At some point in 2016, I became frustrated that Kevin had not yet been provided
7 the credits he had been promised and that he would not let it go. So to appease him, I provided
8 him with a USB drive that included a so-called key generator that would enable him to generate
9 credits himself for HPT's interface cable. In doing so, I authorized him to use that key generator
10 to provide a reasonable number of credits for himself.

11 19. I did not view this as a breach of protocol because it was well known to everyone
12 at HPT that its software had been cracked numerous times, that it was just a part of doing business
13 in this industry, and that HPT was making so much money that any attempt to stop those efforts
14 was not worth the trouble of doing so. I did, however, make it known to Kevin that he should
15 not spread around the fact that he had that USB drive.

16 20. My ownership interest in HPT was bought out October of 2016. Sometime after
17 that, I began using my personal knowledge and skill to help develop a new hardware cable for
18 the purpose of tuning cars. I knew from experience that developing a superior hardware cable
19 essentially from scratch takes a long time.

20 21. HPT erroneously alleges that a PCM harness for and E38 controller is somehow
21 proprietary to HPT. In fact, that device is nothing but a simple wiring cable with pinouts specific
22 to the E38 controller. And contrary to HPT's motion, I am the person who created that device,
23 not Keith Prociuk. And also contrary to HPT's motion, that device is not proprietary to HPT.
24 Attached as Cannata Exhibit 1 is a screen capture of the Speartech website offering to sell that
25 product to the public. There is nothing about that product which is proprietary to anyone.
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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on August 20, 2018.

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6 Ken Cannata
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I electronically filed the above with the Clerk of the Court using the CM/ECF system. In accordance with their ECF registration agreement and the Court's ruling, the Clerk of the Court will send email notification of such filing to the following persons:

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☒ by CM/ECF
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Executed on August 20, 2018, at Seattle, Washington.

s/John Whitaker

John Whitaker